



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

dent, where defendant claimed a passing automobile had struck her automobile, causing the accident, evidence held to warrant instruction that defendant was negligent if there was a sufficient interval between impact with passing automobile and accident to enable defendant in exercise of ordinary care to stop her car.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 377.]

Error to Hastings Court of Richmond.

Action by James Oliver's administrator against Kate S. Trauerman. Judgment for plaintiff, and defendant brings error. Affirmed.

*Williams & Mullen* and *Smith & Gordon*, all of Richmond, for plaintiff in error.

*Hudson Cary*, of Richmond, for defendant in error.

---

McCOY v. COMMONWEALTH.

June 18, 1919.

[99 S. E. 644.]

1. **Homicide (§ 300 (7)\*)—Instruction—Self-Defense—Applicability to Evidence.**—In a murder prosecution, where it was claimed that defendant was the aggressor, and the only provocation was angry words, instruction that bare fear, unaccompanied by overt acts, will not justify a killing in self-defense held supported by the evidence.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 158.]

2. **Homicide (§ 300 (15)\*)—Instructions—Self-Defense—Duty to Retreat.**—In a prosecution for murder, an instruction that unless the assault is so fierce or of such a nature as to prevent it, the person assaulted should retreat so far as he reasonably can, so as to prevent his killing his adversary, was erroneous, as ignoring the distinction between justifiable and excusable homicide in self-defense.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 159.]

3. **Criminal Law (§§ 422 (6), 1169 (7)\*)—Declaration of Coindictée—Review—Harmless Error.**—In a prosecution for murder, evidence that one jointly indicted with defendant ordered two boys immediately before the shooting to leave was irrelevant, but harmless, where defendant was in no way connected therewith, and was not shown to have heard the remarks nor to have acquiesced therein.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 78.]

4. **Criminal Law (§ 719 (1)\*)—Argument of Counsel.**—In a prosecution for murder, a statement by the prosecuting attorney at the

---

\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

close of his argument that the way a certain black jack got into the case was because, after the shooting, one jointly indicted with defendant threw down the black jack beside deceased was prejudicial error, as not being supported by evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 715; 16 Va.-W. Va. Enc. Dig. 136.]

**5. Criminal Law (§ 730 (7)\*)—Remarks of Counsel—Cure of Error.**—In a prosecution for murder, where the prosecuting attorney without justification in the evidence stated that one jointly indicted with defendant threw down the black jack beside deceased after the shooting, the statement by the court that he did not remember the evidence as to the black jack, and that jury should not consider statement by counsel not supported by the evidence, furnished no protection to the defendant against counsel's improper remarks.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 82.]

Error to Circuit Court, Dickenson County.

Wm. McCoy was convicted of murder in the second degree, and he brings error. Reversed.

*Chase & McCoy* and *Skeen & Skeen*, of Clintwood, for plaintiff in error.

*Jno. R. Saunders*, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *F. B. Richardson*, of Richmond, for the Commonwealth.

---

AMERICAN SURETY CO. OF NEW YORK *v.* QUINCEY et al.

June 12, 1919.

[99 S. E. 641.]

**1. Executors and Administrators (§ 506 (3)\*)—Ex Parte Account—Confirmation by Failure to Except—Opening—Evidence.**—Conceding that ex parte account of executors stood confirmed at end of 30 days from filing thereof, no exceptions having been filed thereto, as provided by Code 1904, § 2098, evidence of misappropriation by executor and fraudulent entries held sufficient to authorize court to order a reference of issue, under rule that good cause for reopening account must be made before a reference can be had.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 673.]

**2. Executors and Administrators (§ 528 (4)\*)—Bonds—Liability of Surety—Authority under Will—Knowledge of Facts.**—Where surety company on bond of executor knew before issuance of bond that main reason for appointment of foreign executor as executor in Virginia was to handle money coming from sale of real estate in-

---

\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.